

CA

**BORROWER INFORMATION****BORROWER:**

BORROWER'S LEGAL NAME: {FIELD001}	TRADE NAME: {FIELD002}	FEDERAL ID#: {FIELD013}
TYPE OF ENTITY: {BUSINESS_TYPE_FNAME}		
PHYSICAL ADDRESS: {FIELD004}	CITY: {FIELD005} STATE: {FIELD006}	ZIP: {FIELD007}
MAILING ADDRESS: {FIELD008}	CITY: {FIELD009} STATE: {FIELD010}	ZIP: {FIELD011}
TELEPHONE: {MERCHANT_PHONE}	EMAIL ADDRESS: {MERCHANT_EMAIL}	FAX: {MERCHANT_FAX}
NAME AND TITLE OF SIGNOR: {O1_FIRST} (FIRST)	{O1_LAST} (LAST)	{O1_TITLE} (TITLE)

Contract# {FIELD000}

**KAPITUS LOAN SUMMARY**

*This Loan Summary is part of (and incorporated by reference into) the Loan Agreement. All parties should retain a copy of this document for their records.*

<b>LENDER:</b>	<b>Kapitus (a/k/a Strategic Funding Source, Inc.) 2500 Wilson Boulevard Suite 350, Arlington, VA 22201 California Finance Lender License No. 603G807</b>
<b>SERVICER:</b>	<b>Kapitus Servicing, Inc., 2500 Wilson Boulevard, Suite 350, Arlington, VA 22201</b>
<b>PRINCIPAL AMOUNT:</b>	<b>{FIELD014}</b>
<b>DISBURSEMENT AMOUNT:</b> PRINCIPAL LESS CONTRACT FEES	<b>{DISBURSEMENT}</b> <i>Note that the Disbursement Amount will be reduced by any applicable fees, any amounts owed to Lender from a prior loan or used by Lender to pay off an amount owed to a third party on Borrower's behalf.</i>
<b>TOTAL INTEREST CHARGED:</b>	<b>{INTEREST}</b>
Total Repayment Amount:	{FIELD016}
Principal plus Interest	{FIELD014} in Principal and {INTEREST} in Interest.

<b>PAYMENT SCHEDULE:</b>  <b>NUMBER OF PAYMENTS:</b>	<b>Term (Months) {TERM}</b>  <b>{NUM_PAYMENTS}</b> payments of <b>{PAYMENT_AMT}</b>																
<b>PRE-PAYMENT OPTION:</b>	A prepayment discount may apply with respect to this Loan if the Borrower(s) have made all payments as agreed and pays the balance of the Loan early in accordance with, and subject to, Section 1.15 of the Loan Agreement Terms and Conditions.																
<b>FEES:</b>	<table border="0"> <tr> <td>• ORIGATION FEE</td><td>\$[ORIGATION FEE]</td></tr> <tr> <td>• FUNDING WIRE FEE</td><td>\$50.00</td></tr> <tr> <td>• FUNDING ACH FEE</td><td>\$20.00</td></tr> <tr> <td>• CHANGE OF BANK ACCOUNT</td><td>\$75.00</td></tr> <tr> <td>• ADJUSTMENTS TO THE REPAYMENT SCHEDULE</td><td>\$100.00</td></tr> <tr> <td>• UCC TERMINATION FEE</td><td>\$250.00</td></tr> <tr> <td>• RETURNED PAYMENT FEE</td><td>\$15.00</td></tr> <tr> <td>• DEFAULT FEE</td><td>\$2,500.00</td></tr> </table> <p><i>OTHER THAN THE ORIGATION FEE, LENDER IS NOT CHARGING ANY ORIGATION OR BROKER FEES TO BORROWER. IF BORROWER IS CHARGED ANOTHER SUCH FEE, IT IS NOT BEING CHARGED BY THE LENDER OR ITS SERVICING AGENT, KAPITUS SERVICING NOR DOES LENDER OR KAPITUS SERVICING RECEIVE ANY PORTION OF SUCH FEES.</i></p> <p><i>ALL FEES LISTED IN THIS CONTRACT ARE SUBJECT TO CHANGE.</i></p> <p><i>IF YOUR APPLICATION FOR BUSINESS CREDIT IS DENIED, YOU HAVE THE RIGHT TO A WRITTEN STATEMENT OF THE SPECIFIC REASONS FOR THE DENIAL. TO OBTAIN THE STATEMENT, PLEASE CONTACT KAPITUS AT THE ABOVE ADDRESS OR PHONE NUMBER WITHIN 60 DAYS FROM THE DATE YOU ARE NOTIFIED OF THE CREDIT DECISION. YOU HAVE THE RIGHT TO OBTAIN A WRITTEN STATEMENT OF REASONS FOR THE DENIAL WITHIN 30 DAYS OF KAPITUS RECEIVING YOUR REQUEST FOR THE STATEMENT.</i></p> <p><i>NOTICE: THE FEDERAL EQUAL CREDIT OPPORTUNITY ACT PROHIBITS CREDITORS FROM DISCRIMINATING AGAINST CREDIT APPLICANTS ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, MARITAL STATUS, AGE (PROVIDED THE APPLICANT HAS THE CAPACITY TO ENTER INTO A BINDING CONTRACT); BECAUSE ALL OR PART OF THE APPLICANT'S INCOME DERIVES FROM ANY PUBLIC ASSISTANCE PROGRAM; OR BECAUSE THE APPLICANT HAS IN GOOD FAITH EXERCISED ANY RIGHT UNDER THE CONSUMER CREDIT PROTECTION ACT. THE FEDERAL AGENCY THAT ADMINISTERS COMPLIANCE WITH THIS LAW CONCERNING THIS CREDITOR IS THE FEDERAL TRADE COMMISSION, 600 PENNSYLVANIA AVENUE, NW, WASHINGTON, DC 20580, FTC.GOV.</i></p>	• ORIGATION FEE	\$[ORIGATION FEE]	• FUNDING WIRE FEE	\$50.00	• FUNDING ACH FEE	\$20.00	• CHANGE OF BANK ACCOUNT	\$75.00	• ADJUSTMENTS TO THE REPAYMENT SCHEDULE	\$100.00	• UCC TERMINATION FEE	\$250.00	• RETURNED PAYMENT FEE	\$15.00	• DEFAULT FEE	\$2,500.00
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• RETURNED PAYMENT FEE	\$15.00																
• DEFAULT FEE	\$2,500.00																

Initials: \_\_\_\_\_

**ANY MISREPRESENTATION MADE BY BORROWER OR GUARANTOR IN CONNECTION WITH ANY APPLICATION FOR FUNDING, IN ANY DOCUMENT SUBMITTED AND/OR IN THIS AGREEMENT WILL CONSTITUTE A SEPARATE CAUSE OF ACTION AGAINST THE BORROWER OR GUARANTOR, INCLUDING BUT NOT LIMITED TO A CLAIM FOR FRAUD OR FRAUDULENT INDUCEMENT.**

CA

Contract# {FIELD000}



**LOAN AGREEMENT**

Loan Agreement (the "Agreement" or the "Loan Agreement") dated {FIELD027} {FIELD028} {FIELD029} ("Agreement Date") between Strategic Funding Source, Inc., d/b/a KAPITUS ("LENDER") and {FIELD001}, {FIELD000} ("Borrower"<sup>1</sup>) and {FIELD019}, {FIELD020} ("Guarantor"<sup>2</sup>).

For value received, Borrower hereby promises to pay to LENDER the Repayment Amount specified below, which is comprised of the Principal plus Interest, in lawful money of the United States:

Principal: {FIELD014}	Interest Total: {INTEREST}	Payment: {PAYMENT_AMT}	Repayment Amount: {FIELD016}
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The Repayment Amount shall be paid to LENDER by Borrower using and irrevocably authorizing only one depositing bank account acceptable to LENDER (the "Account") to remit the Payment until such time as LENDER receives payment in full of the Repayment Amount plus any other amounts owed to LENDER under this Agreement. Borrower hereby authorizes LENDER to ACH debit the specified remittances from the Account on a {DEBIT\_FREQ\_LC} basis and will provide LENDER with all required access codes. Borrower understands that it is responsible for ensuring that the Payment to be debited by LENDER remains in the Account and Borrower will be held responsible for any fees incurred by LENDER resulting from a rejected ACH attempt or an event of default (see, Loan Summary, Returned Payment Fee). LENDER is not responsible for any overdrafts or rejected transactions that may result from LENDER ACH debiting any amounts under the terms of this Agreement. LENDER will debit the Payment {DEBIT\_FREQ\_LONG}. Notwithstanding anything to the contrary in this Agreement or any other agreement between LENDER and Borrower, upon the occurrence of an Event of Default under Section 3 of the Loan Agreement Terms and Conditions, the entire Repayment Amount, less any amounts already paid, shall become immediately due together with all attendant fees. A list of all fees applicable under this Agreement is contained in the Loan Summary.

**AUTHORIZED SUB-SERVICING AGENT – Kapitus Servicing, Inc.**

LENDER, as Agent, may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents. Kapitus Servicing, Inc. ("Kapitus Servicing") is the Authorized Sub-Servicing Agent of the LENDER for this contract providing administrative, bookkeeping, reporting and support services for the LENDER and the Borrower. Kapitus Servicing is acting as agent for services including but not limited to background checks, credit checks, general underwriting review, filing UCC-1 security interests, cash management, account reporting, servicing, collections and remit capture. Borrower and Owner/Guarantor acknowledge and agree that LENDER has granted Kapitus Servicing all right and authority as its general agent to take any and all actions to enforce the terms of this Agreement, through legal actions in the name of LENDER, or otherwise. Any and all authorizations and/or rights granted to LENDER under this Agreement are hereby granted to Kapitus Servicing, as servicer and general agent for LENDER. Kapitus Servicing is not a credit card processor, or in the business of processing credit cards. Borrower and the Owner/Guarantor hereby acknowledges that in no event will Kapitus Servicing be liable for any claims made against the LENDER under any legal theory for lost profits, lost revenues, lost business opportunity, exemplary, punitive, actual, special, incidental, indirect or consequential damages, each of which is waived by the Borrower and Owner/Guarantor. This provision shall survive the repayment of the Repayment Amount and the termination of this Agreement.

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "LOAN SUMMARY," "LOAN AGREEMENT TERMS AND CONDITIONS," "USE OF PROCEEDS CERTIFICATION," "SECURITY AGREEMENT AND GUARANTY" AND "ADDENDUM TO SECURITY AGREEMENT AND GUARANTY" (AS APPLICABLE), ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS AGREEMENT.

Each of the undersigned represents and warrants that he or she is authorized to sign this Agreement on behalf of their respective party or themselves, and that they have the full power and authority to bind such party to this Agreement and that the information provided herein and in all of LENDER's forms is true, accurate and complete in all respects.

**BORROWER**

By: \_\_\_\_\_  
 (Print Name and Title)

  
  

\_\_\_\_\_  
 (Signature)

**GUARANTOR**  
By: {OWNER\_1} \_\_\_\_\_  
(Print Name)  
  
\_\_\_\_\_  
(Signature)

**STRATEGIC FUNDING SOURCE, INC. d/b/a KAPITUS**

By: \_\_\_\_\_, Officer  
(Print Name)

\_\_\_\_\_  
(Signature)

<sup>1</sup> “Borrower” as used throughout this Loan Agreement and all attachments hereto, shall collectively refer to all Borrowers, if more than one is listed.  
<sup>2</sup> “Guarantor” as used throughout this Loan Agreement and all attachments hereto, shall collectively refer to all Guarantors, if more than one is listed.

**LOAN AGREEMENT TERMS AND CONDITIONS**

*The Loan Agreement Terms and Conditions is part of (and incorporated by reference into) the Loan Agreement. All parties should retain a copy of this document for their records*

**I. GENERAL TERMS**

1.1 **BORROWER DEPOSIT AGREEMENT.** Borrower shall execute documents or agreements (the “Borrower Deposit Agreement”) acceptable to LENDER, with a bank acceptable to LENDER, to obtain electronic fund transfer services. Borrower hereby authorizes LENDER and/or its agent to obtain any amounts due to LENDER by ACH debit of the account designated by Borrower, and of any other Borrower account. The authorization shall be irrevocable absent the written consent of LENDER to cease debiting the payments due.

1.2 **EFFECTIVE DATE.** This Agreement begins on the date that funds are disbursed to Borrower.

1.3 **TERM OF AGREEMENT.** This Agreement shall have a term of [REPAYMENT PERIOD].

1.4 **PROMISE TO PAY.** Borrower agrees to pay LENDER the Repayment Amount in accordance with the Payment Schedule set forth in the Loan Summary.

1.5 **FINANCIAL CONDITION.** Borrower and Guarantor authorize LENDER, to investigate their creditworthiness, financial responsibility and history, and agree to provide LENDER any financial statements, tax returns, references, or other financial information, as LENDER deems necessary prior to or after execution of this Agreement. A photocopy of this authorization will be deemed as acceptable for release of credit and financial information. Borrower and Guarantor authorize LENDER to update their credit and financial profile from time to time in the future, as LENDER deems appropriate. One or more investigative, consumer, and personal or business credit reports may be made in connection with this Agreement.

1.6. **FINANCIAL INFORMATION AND REEVALUATION OF CREDIT.** Borrower and Guarantor authorize LENDER to obtain business and personal credit bureau and consumer reports in Borrower’s and Guarantor’s names, respectively, at any time and from time to time for purposes of deciding whether to approve the requested Loan or for any update, renewal, extension of credit or other lawful purpose. Upon Borrower’s or Guarantor’s request, LENDER will advise Borrower or Guarantor if LENDER obtained a credit report and LENDER

will give Borrower or Guarantor the credit bureau’s name and address. Borrower and Guarantor agree to submit current financial information, a new credit application, or both, in Borrower’s name and in the name of Guarantor, respectively, at any time promptly upon LENDER’s request. Borrower and Guarantor authorize LENDER to act as Borrower’s and Guarantor’s agent, respectively, for purposes of accessing and retrieving transaction history information regarding Borrower and/or Guarantor from Borrower’s and Guarantor’s designated merchant processor. LENDER may report LENDER’s credit experiences with Borrower and Guarantor of Borrower’s Loan to third parties as permitted by law. Borrower and Guarantor also agree that LENDER may release information to comply with governmental reporting or legal process that LENDER believes may be required, whether or not such is in fact required, or when necessary or helpful in completing a transaction, or when investigating a loss or potential loss.

1.7 **TRANSACTIONAL HISTORY.** Borrower and Guarantor authorize Borrower’s and Guarantor’s respective financial institutions to provide LENDER with Borrower’s and Guarantor’s transaction history, and any and all information regarding Borrower’s accounts, balances, or transfers, for any purpose, including for purposes of collection.

1.8 **INDEMNIFICATION.** Borrower and Guarantor jointly and severally will indemnify and hold LENDER, and its officers, directors, shareholders, members, managers, employees, owners, partners, affiliates, subsidiaries, parent company, successors, transferees, assigns, purchasers, investors, financiers, agents, representatives, attorneys and professionals (collectively, the “LENDER PARTIES”) harmless from all losses, costs, damage, liabilities or expenses (including, without limitation, court costs and attorneys’ fees) that the LENDER PARTIES may sustain or incur by reason of defending claims asserted by Borrower to the fullest extent permitted by law, in protecting the security interest or the priority thereof, in enforcing any other term of this Agreement, and/or in the prosecution or defense of any action or proceeding concerning any matter arising out of or in connection with this Agreement and/or any other documents now or hereafter executed in connection with this Agreement and/or

the Collateral. This indemnity shall survive the repayment of the Repayment Amount and the termination of this Agreement

In no event will the LENDER PARTIES be liable for any claims asserted by Borrower under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by Borrower and Guarantor(s).

1.9 **POWER OF ATTORNEY.** Borrower and Guarantor irrevocably appoint LENDER as its agent and attorney-in-fact with full authority to take any action or execute any instrument or document to settle all obligations due to LENDER from Borrower’s and Guarantor’s respective financial institutions, or upon the occurrence of an Event of Default under Section III hereof, to settle all obligations due to LENDER from Borrower and Guarantor, under this Agreement, including without limitation (i) to obtain and adjust insurance; (ii) to collect monies due or to become due under or in respect of any of the Collateral (as defined in the Security Agreement and Guaranty); (iii) to receive, endorse and collect any checks, notes, drafts, instruments, documents or chattel paper in connection with clause (i) or clause (ii) above; (iv) to sign Borrower’s and Guarantor’s name on any invoice, bill of lading, or assignment directing customers or account debtors to make payment directly to LENDER; and (v) to file any claims or take any action or institute any proceeding which LENDER may deem necessary for the collection of any of the unpaid Repayment Amount from the Collateral, or otherwise to enforce its rights with respect to payment of the Repayment Amount. This provision shall survive the repayment of the Repayment Amount and the termination of this Agreement.

1.10 **DISCLOSURE OF CREDIT INFORMATION.** Borrower and each person signing this Agreement on behalf of Borrower and/or as Guarantor, in respect of himself or herself personally, authorizes LENDER to disclose to any third party information concerning Borrower’s and Guarantor’s credit standing (including credit bureau reports that LENDER obtains) and business conduct. Borrower and Guarantor hereby waive to the maximum extent

permitted by law any claim for damages against the LENDER PARTIES relating to any (i) investigation undertaken by or on behalf of LENDER as permitted by this Agreement or (ii) disclosure of information as permitted by this Agreement. This provision shall survive the repayment of the Repayment Amount and the termination of this Agreement.

1.11 **PUBLICITY.** Borrower and Guarantor authorize LENDER to use its, his or her name in a listing of clients and in advertising and marketing materials. This provision shall survive the repayment of the Repayment Amount and the termination of this Agreement

1.12 **UCC Agent & D/B/A'S.** Borrower and Guarantor hereby acknowledge and agree that LENDER may be using affiliates, representatives, agents, "doing business as" "d/b/a" and/or fictitious names in connection with various matters relating to the transaction between LENDER and Borrower and Guarantor, and may file UCC-1 financing statements and other notices or filings using such entities or names on its own behalf or through LENDER's UCC agent. LENDER shall have no obligation to terminate any UCC financing statement filed in connection with this Agreement absent a written request by Borrower after repayment in full of the Borrower's obligation under this Agreement. Notwithstanding any terms to the contrary contained herein, and except as may be required under applicable law, LENDER shall have no obligation to terminate any UCC financing statement while there is a pending: (i) petition for bankruptcy protection under Title 11 of the United States Code or any state-law analogue filed by or against LENDER or any guarantor; (ii) insolvency proceeding or other proceeding for relief for debtors; (iii) receivership proceeding brought by or against Borrower and/or Guarantor; and/or (iv) any other legal proceeding or alternative dispute resolution proceeding between any of the Borrower and/or Guarantor, on the one hand, and the LENDER PARTIES, on the other hand.

1.13 **LOAN FOR SPECIFIC PURPOSES ONLY.** The proceeds of the requested Loan may solely be used only for the specific purposes as set forth in a Use of Proceeds Certification Addendum, and not for any other purposes. Under no circumstances will the Loan be used for personal, family or household purposes. Borrower and Guarantor understand that Borrower's agreement not to use the Loan proceeds for personal, family or household purposes means that certain important duties imposed upon entities making loans for consumer/personal purposes, and certain important rights conferred upon consumers,

pursuant to federal or state law will not apply to the Loan or the Agreement. Borrower and Guarantor agree that a breach by Borrower of the provisions of this section will not affect LENDER's right to (i) enforce Borrower's and Guarantor's promise to pay for all amounts owed under this Agreement, regardless of the purpose for which the Loan is in fact obtained or (ii) use any remedy legally available to LENDER, even if that remedy would not have been available had the Loan been made for consumer purposes.

1.14 **ALTERNATIVE PAYMENT METHODS.** If Borrower knows that for any reason LENDER will be unable to receive payment from Borrower's bank account as described in the Loan Agreement, then Borrower must promptly, set up another arrangement for payment that is authorized by LENDER. Borrower and Guarantor understand and agree that alternate payments made at any other address or method than as specified by LENDER may result in a delay in processing and/or crediting payments from Borrower and/or Guarantor.

1.15 **OPTION TO PREPAY.** Borrower shall have the option to prepay the Repayment Amount at any time by paying to LENDER the sum of the entire Repayment Amount and applicable Fees incurred under this Agreement, less Loan Payments previously made. If the Borrower has performed as agreed, at LENDER's option the Borrower may receive a maximum 20% discount on the unpaid accrued interest then remaining on the account.

1.16 **APPLICATION OF PAYMENTS.** LENDER reserves the right to allocate payments received on Borrower's Loan between principal, interest and fees in any manner LENDER chooses and in LENDER's sole discretion. Borrower and Guarantor understand and agree that any fees and interest will generally be paid during the earlier portion of the term.

1.17 **CONSENT TO JURISDICTION AND VENUE.** Borrower and Guarantor agree that any suit, action or proceeding to enforce or arising out of this Agreement shall be brought in any court in Los Angeles County, California or in the United States District Court for the Central District of California (the "**Acceptable Forums**"). Borrower and Guarantor agree that the Acceptable Forums are convenient to them, submit to the jurisdiction of the Acceptable Forums and waive any and all objections to jurisdiction or venue. In the event a legal proceeding concerning this Agreement is initiated in any other forum, Borrower and Guarantor waive any right to oppose any motion or application made by LENDER to transfer such proceeding to an Acceptable Forum, or to dismiss the action on the grounds of *forum non conveniens*.

1.18 **GOVERNING LAW.** This Agreement and any claim, dispute or controversy (whether in contract, tort, or otherwise) at any time arising from or relating to this Agreement is governed by, and this Agreement will be construed in accordance with California law (to the extent not preempted by federal law) without regard to internal principles of conflict of laws. The legality, enforceability and interpretation of this Agreement and the amounts contracted for, charged and reserved under this Agreement will be governed by the laws of the State of California.

## **II. REPRESENTATIONS, WARRANTIES AND COVENANTS** Borrower and Guarantor represent, warrant and covenant that as of this date and during the term of this Agreement:

2.1 **FINANCIAL CONDITION AND FINANCIAL INFORMATION.** The financial statements which have been furnished to LENDER by Borrower and Guarantor, and such future statements which will be furnished hereafter at the request of LENDER, fairly represent the financial condition of Borrower and Guarantor at such dates, and since those dates there has been no material adverse change, financial or otherwise, in such condition, operation or ownership of Borrower or Guarantor. Borrower is current on any and all lease, rent or mortgage payments due. Borrower and Guarantor are currently in compliance with all loans, financing agreements, promissory notes and/or other obligations of indebtedness, except as disclosed to LENDER. No material changes, financial or otherwise, in the condition, operation or ownership of Borrower are in any way expected or anticipated. Borrower has a continuing, affirmative obligation to advise LENDER of any material adverse change in its financial condition, operation or ownership. Borrower's failure to do so is a material breach of this Agreement.

2.2 **COMPLIANCE WITH LAW.** Borrower is in compliance and shall comply with all laws, including possession of all necessary permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged.

2.3 **AUTHORIZATION.** Borrower, and each person signing this Agreement on behalf of Borrower and/or as Guarantor, in respect of himself or herself personally and the person(s) signing this Agreement on behalf of Borrower, have full power and authority to execute this Agreement and to incur and perform the obligations under this Agreement, all of which have been duly authorized.

2.4 **INSURANCE.** Borrower will maintain business-

interruption insurance and, upon request by the LENDER name LENDER as certificate holder, loss payee and additional insured in amounts and against risks as are satisfactory to LENDER and shall provide LENDER proof of such insurance.

2.5. **TAX OBLIGATIONS.** Borrower and Guarantor are currently in compliance with all federal state and local tax laws, have filed all returns, and have paid all taxes due, except as disclosed to LENDER.

2.6 **BORROWER DEPOSITING ACCOUNT AGREEMENT AND ARRANGEMENTS.** Without LENDER's prior written consent, Borrower will not (i) change the Account through which Borrower's receivables are settled; (ii) set up multiple bank accounts into which any of the Borrower's receivables are deposited or otherwise transferred, (iii) block or stop payment on LENDER debits initiated under this Agreement, (iv) permit any event to occur that could cause diversion of any of Borrower's receivables to another Account; (v) take any other action that could have any adverse effect upon Borrower's obligations under this Agreement. Borrower will batch out receipts with all payment processors on a daily basis. Any of the foregoing changes, actions or inactions shall be a material breach of this Agreement.

2.7 **CHANGE OF NAME, LOCATION OR JURISDICTION OF ORGANIZATION.** Borrower will not conduct Borrower's businesses under any name other than as disclosed to LENDER, change any of its places of business, or change its jurisdiction of organization without ten (10) days prior written notice to LENDER.

2.8 **NO BANKRUPTCY OR INSOLVENCY** Borrower is solvent, and no transfer of property is being made by Borrower or Guarantor and no obligation is being incurred by Borrower or Guarantor in connection with this Agreement with the intent to hinder, delay, or defraud either present or future creditors of Borrower or Guarantor. Neither Borrower nor Guarantor has as of the date of this Agreement, filed any petition for bankruptcy protection under Title 11 of the United States Code or any state-law analogue, and there has been no involuntary petition, insolvency proceeding or other proceeding for relief for debtors, or receivership proceeding brought or pending against Borrower and/or Guarantor. Borrower and Guarantor further and respectively warrant that neither anticipates filing or having any such voluntary or involuntary bankruptcy petition filed.

2.9 **OTHER FINANCING.** Borrower shall not enter into any arrangement, agreement or commitment, Kapitus-California 2018-12-05

whether in the form of a purchase of (such as a merchant cash advance or factoring arrangement), a loan against, or the sale or purchase of credits against, any receipts, cash deposits or future card or mobile payment sales with any party other than LENDER without LENDER's written permission.

2.10 **UNENCUMBERED ASSETS.** Other than as previously disclosed to LENDER in writing, Borrower has good and marketable title to all assets free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of, LENDER.

2.11 **DEFAULT UNDER OTHER CONTRACTS.** Borrower's and/or Guarantor's execution of or performance under this Agreement will not cause or create an event of default by Borrower and/or Guarantor under any contract with another person or entity.

2.12 **AUTHORIZATION TO OBTAIN LEASE INFORMATION.** Borrower authorizes LENDER to receive pertinent information regarding the commercial lease or mortgage for the physical location of Borrower's business (the "Premises") from any applicable lender, leasing company or agent. Upon any Event of Default under this Agreement, as security for the Borrower's obligations set forth herein, Borrower shall deliver to LENDER an executed **Assignment of Lease** covering the Premises in favor of LENDER.

2.13 **SALE OF BUSINESS.** Borrower shall not sell, dispose, transfer or otherwise convey its business or assets without (i) the express prior written consent of LENDER, and (ii) the written agreement of any purchaser or transferee assuming all of Borrower's obligations under this Agreement pursuant to documentation satisfactory to LENDER.

2.14 **ACCURACY OF INFORMATION.** All information provided by Borrower and Guarantor to LENDER in this Agreement including the Security Agreement and Guaranty, and in all other LENDER forms is true, accurate and complete in all respects.

### **III. EVENTS OF DEFAULT AND REMEDIES**

3.1 **EVENTS OF DEFAULT.** The occurrence of any of the following events shall constitute an "**Event of Default**" hereunder:

(a) Borrower obtains, or Guarantor obtains on

Borrower's behalf, another loan, factoring agreement, merchant cash advance or similar financing, whether secured or unsecured during the performance of this Agreement;

(b) Borrower or Guarantor violates any term, covenant or condition in this Agreement or in the Security Agreement and Guaranty;

(c) Borrower or Guarantor use the funds for any household or non-business purpose;

(d) Any representation or warranty by Borrower or Guarantor in this Agreement or the Security Agreement and Guaranty is incorrect, incomplete, false or misleading in any material respect when made;

(e) Borrower or Guarantor admits its inability to pay its debts, or makes a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against Borrower or Guarantor seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, or composition of it or its debts (as applicable); or any receivership proceeding shall be instituted by or against Borrower or Guarantor;

(f) Borrower or Guarantor sends a notice of termination of the Security Agreement and Guaranty or of any UCC financing statement;

(g) Borrower suspends, dissolves or terminates its business;

(h) Borrower sells its business or all or substantially all of its assets without prior written consent of LENDER;

(i) Borrower makes or sends notice of any intended bulk sale or transfer by Borrower;

(j) Borrower or Guarantor performs any act that encumbers the cash flow of the business or reduces the value of the Collateral or the security interest granted in the Collateral under the Security Agreement and Guaranty;

(k) Borrower or Guarantor perform any act that reduces the value of the Additional Collateral (as defined in the Security Agreement and Guaranty) or the security interest granted in the Additional Collateral under the Security Agreement and Guaranty;

(l) Borrower or Guarantor performs any act that reduces the value of the Cross-Collateral (as defined in the Security Agreement and Guaranty);

(m) Borrower or Guarantor defaults under any of the terms, covenants and conditions of any other agreement with LENDER including those with affiliated/associated businesses; and/or

(n) Borrower fails to make any payment as agreed.

3.2 **REMEDIES FOR DEFAULT.** Upon the occurrence of an Event of Default that is not waived pursuant to Section 4.1 hereof, LENDER may proceed to

protect and enforce its rights or remedies by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein, or to enforce the discharge of Borrower's and Guarantor's obligations hereunder, including under the Security Agreement and Guaranty, or pursuant to any other legal or equitable right or remedy. Upon any Event of Default, the entire Repayment Amount and unpaid fees not already paid to LENDER shall become immediately due and payable to LENDER. In addition, upon an Event of Default (i) LENDER may enforce the provisions of the Security Agreement and Guaranty against the Borrower and Guarantor; (ii) LENDER may enforce its security interest in the Collateral, the Additional Collateral and the Cross-Collateral; (iii) LENDER may debit Borrower's and/or Guarantor's depository accounts wherever situated by means of ACH debit or facsimile signature on a computer-generated check drawn on Borrower's and/or Guarantor's respective bank accounts or otherwise; (iv) LENDER may receive funds directly from any credit card processor of Borrower; and (v) LENDER may exercise its rights under the Assignment of Lease. All rights, powers and remedies of LENDER in connection with this Agreement and the Security Agreement and Guaranty may be exercised at any time by LENDER after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity. Borrower and Guarantor acknowledge and agree that there may be no adequate remedy at law with respect to a breach of this Agreement, and the Security Agreement and Guaranty. Accordingly, Borrower and Guarantor agree that LENDER shall have the right, in addition to any other rights and remedies existing in LENDER'S favor at law or in equity, to enforce LENDER'S rights and obligations under this Agreement, the Security Agreement and Guaranty not only by an action or actions for damages, but also for an action or actions for specific performance, injunctive and/or other equitable relief without posting of a bond or other security.

3.3 **COSTS.** Borrower and Guarantor shall pay to LENDER all reasonable costs associated with (a) a breach by Borrower or Guarantor of the representations, warranties and covenants in this Agreement including the Security Agreement and Guaranty and the enforcement thereof, and (b) the enforcement of LENDER's remedies set forth in Section 3.2 above, including but not limited to: (i) court costs, (ii) attorneys' fees of twenty-five percent (25%) of the total balance due, and (iii)

default interest of 10% from the date of default or such other amount as allowed by law.

3.4 **REQUIRED NOTIFICATIONS.** Borrower and Guarantor are required to give LENDER written notice: (a) at least 24 hours prior to any filing by Borrower or Guarantor under Title 11 of the United States Code or any state-law analogue; (b) at least seven days' prior to the closing of any sale of all or substantially all of the Borrower's assets or equity interests; and (c) at least fourteen days' prior to the suspension, dissolution or termination of its business.

3.5 **DEFAULT FEE.** Upon the occurrence of any Event of Default Borrower and Guarantor shall be liable to LENDER for a default fee ("Default Fee") of \$2,500.00. This Default Fee shall be payable on demand and stand in addition to any other fees or charges outlined within this Agreement, the Security Agreement and Guaranty, or the Loan Summary.

3.6 **SERVICE FEES.** Borrower shall pay certain fees for services related to the origination and maintenance of accounts which may include but not be limited to: Borrowers funding is provided electronically to Borrower's designated bank account and charged a fee of \$50.00 for a Fed Wire or \$20.00 for an ACH. The origination fee of [Origination Fee] is deducted from the funded amount in accordance with the schedule outlined in the Loan Summary. Borrower and its sales representative or broker may have agreed to an additional fee in relation to their services. ANY SUCH FEES ARE NOT CHARGED BY LENDER NOR DOES LENDER OR ITS SUB-SERVICING AGENT RECEIVE ANY PORTION OF SUCH FEES.

#### IV. MISCELLANEOUS

4.1 **MODIFICATIONS; AGREEMENTS.** No modification, amendment, waiver or consent of any provision of this Agreement including the Security Agreement and Guaranty shall be effective unless the same shall be in writing and signed by LENDER.

#### 4.2 **LENDER ACTING AS AGENT.**

LENDER has entered into this Agreement, the Security Agreement and the Guaranty (collectively, the Transaction Documents") as agent (in such capacity, "Agent") for itself and one or more third parties as "co-lenders" (each a "Principal"). Agent and each Principal have elected to treat the transaction consummated under the Transaction Documents (the "Transaction") as a single transaction on behalf of separate Principals, and Agent hereby certifies that the portion of the

Transaction allocable to the account of each of the Principals for which it is acting as Agent (to the extent that any such Transaction is allocable to the account of more than one Principal) is set forth in one or more addenda to the Transactional Documents, which may be provided to Borrower upon request, , shall be subject to this Section 4.2 as detailed below.

All references to "LENDER" or "Borrower" or "Guarantor(s)," as the case may be, in the Transaction Documents shall be subject to the provisions of this Section 4.2 and shall be construed to reflect that (i) each Principal shall have, in connection with the Transaction entered into by the Agent on its behalf, all of the rights, responsibilities, privileges and obligations of a "LENDER" directly entering into such Transaction with the other parties under each of the Transaction Agreements and (ii) Agent's Principals have designated Agent (acting through the Authorized Subservicing Agent) as their sole agent for performance of LENDER's obligations to Borrower and for receipt of performance by Borrower of its obligations to LENDER in connection with the Transaction (including, among other things, as Agent for each Principal in connection with transfers of cash or other property and as agent for giving and receiving all notices under the Transaction Documents), either directly or indirectly. Both Agent and its Principals shall be deemed "parties" to the Transaction Documents and all references to a "party" or "either party" in any Transaction Document shall be deemed revised accordingly.

The parties hereto acknowledge and agree that any assignment, pledge and/or grant to LENDER by the Borrower or a Guarantor of a security interest in and to any property and assets (including the Collateral, Cross-Collateral and the Additional Collateral) pursuant to any of the applicable Transaction Documents to secure the payment and/or performance of any of their respective and/or joint obligations, shall be deemed to have been made to the LENDER for and on behalf of itself and any other Principal. LENDER hereby agrees to hold all Collateral, Cross Collateral and Additional Collateral hereafter delivered to it pursuant to the Transaction Documents, for itself and for the benefit of the Principals, on and subject to the terms and conditions set forth in the Transaction Documents. In its capacity, the Agent and Sub-Servicing Agent is a "representative" of each of the Principals within the meaning of the term "secured party" as defined in the UCC. In addition to the representations and warranties set forth in the Transaction Documents, Agent hereby makes the following representations and warranties, which shall continue during the term



of any Transaction: Principal has duly authorized Agent to execute and deliver the Transaction Documents on its behalf, has the power to so authorize Agent and to enter into the Transaction.

4.3 **NOTICES.** All notices, requests, consent, demands and other communications under this Agreement, including the Security Agreement and Guaranty and any Addendum shall be delivered by ordinary mail to the respective parties at the addresses set forth on Page 1 of this Agreement and shall become effective upon delivery. The Parties hereto may also send such notices, requests, consent, demands and other communications via facsimile ("FAX") or electronic mail ("Email") at such FAX numbers and email addresses communicated by the parties hereto in writing.

4.4 **COUNTERPARTS; ELECTRONIC SIGNATURES.** This Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. For purposes of the execution of this Agreement, signatures delivered by electronic or fax transmission shall be treated in all respects as original signatures.

4.5 **WAIVER OF REMEDIES.** No failure on the part of LENDER to exercise, and no delay in exercising, any right under this Agreement, including under the Security Agreement and Guaranty shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement including the Security Agreement and Guaranty preclude any other or further exercise thereof or the exercise of any other right. The remedies provided hereunder, including those under the Security Agreement and Guaranty are cumulative and not exclusive of any remedies provided by law or equity. This provision shall survive the repayment of the Repayment Amount and the termination of this Agreement.

4.6 **SOLICITATIONS.** Borrower and Guarantor authorize the LENDER PARTIES to communicate with, solicit and/or market to Borrower and Guarantor via regular mail, telephone, electronic mail and facsimile in connection with the provision of goods or services by the LENDER PARTIES, its affiliates or any third party that the LENDER PARTIES share, transfer, exchange, disclose or provide information with and will hold the LENDER PARTIES harmless against any and all claims pursuant to the federal CAN-SPAM ACT of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003), the Telephone Consumer Protection Act (TCPA), and Kapitrus-California 2018-12-05

any and all other states of federal laws relating to transmissions or solicitations by and any of the methods described above. This provision shall survive the repayment of the Repayment Amount and the termination of this Agreement.

4.7 **SURVIVAL OF REPRESENTATION, ETC.** Except as provided in the Authorized Sub-Servicing Agent –Kapitrus Servicing, Inc. provision, Sections 1.8, 1.9, 1.10, 1.11, 4.5, 4.6, 4.8, 4.9, 4.10, 4.11, 4.12, and any other provision of this Agreement that by its nature is intended to survive the repayment of the Repayment Amount and/or the termination this Agreement, all representations, warranties and covenants herein, including in the Security Agreement and Guaranty shall survive the execution and delivery of this Agreement and shall continue in full force until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated. Notwithstanding the foregoing, in the event that LENDER must return any amount paid by Borrower, any guarantor, entity or person with respect to the obligations arising under this Agreement, Security Agreement and Guaranty, including without limitation, arising from or relating to, Borrower, any guarantor, entity or person becoming subject to a proceeding under the United States Bankruptcy Code or any similar law (whether arising under Federal or State law), and/or any other legal proceeding or alternative dispute resolution proceeding, all representations, warranties and covenant's and other obligations under this Agreement, the Security Agreement and Guaranty, the Addendum to the Security Agreement and Guaranty (if any) shall remain in full force and effect and LENDER shall be obligated for any such amounts repaid, as well attorneys' fees, costs and interest in connection with such proceeding.

4.8 **SEVERABILITY, SAVINGS.** In case any of the provisions in this Agreement or the Security Agreement and Guaranty is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any other provision contained herein or therein shall not in any way be affected or impaired, and the contract shall be construed as if such provision had not been included. In no event shall the aggregate amount of interest charged or collected hereunder exceed the highest rate permissible at law. In the event that a court determines that LENDER has charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law and LENDER shall promptly refund to Borrower any interest received by LENDER that is found to be in excess of the maximum lawful rate.

If any provisions of this Agreement are in conflict with any other agreement to which any parties are subject, the provisions hereof shall control. This provision shall survive the repayment of the Repayment Amount and the termination of this Agreement.

4.9 **ENTIRE AGREEMENT.** This Agreement, including the Loan Summary, Security Agreement and Guaranty and Use of Proceeds Certification, embody the entire agreement between Borrower, Guarantor and LENDER and supersede all prior agreements and understandings relating to the subject matter hereof. This provision shall survive the repayment of the Repayment Amount and the termination of this Agreement.

4.10 **JURY TRIAL WAIVER.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OF WHICH THIS AGREEMENT INCLUDING THE SECURITY AGREEMENT AND GUARANTY ARE A PART, OR THE ENFORCEMENT HEREOF OR THEREOF. THE PARTIES HERETO ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS. THIS PROVISION SHALL SURVIVE THE REPAYMENT OF THE REPAYMENT AMOUNT AND THE TERMINATION OF THIS AGREEMENT.

4.11 **CLASS ACTION WAIVER.** THE PARTIES HERETO WAIVE ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW AGAINST PUBLIC POLICY. TO THE EXTENT ANY PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST ANOTHER PARTY, THE PARTIES HEREBY AGREE THAT: (1) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT INCLUDING THE SECURITY AGREEMENT AND GUARANTY);

AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION. THIS PROVISION SHALL SURVIVE THE REPAYMENT OF THE REPAYMENT AMOUNT AND THE TERMINATION OF THIS AGREEMENT.

**4.12 ARBITRATION. PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. THIS SECTION PROVIDES THAT DISPUTES MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, HAVE A JURY TRIAL OR INITIATE OR PARTICIPATE IN A CLASS ACTION. IN ARBITRATION, DISPUTES ARE RESOLVED BY AN ARBITRATOR, NOT A JUDGE OR JURY. ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN IN COURT. THIS ARBITRATION PROVISION IS GOVERNED BY THE FEDERAL ARBITRATION ACT (FAA), AND SHALL BE INTERPRETED IN THE BROADEST WAY THE LAW WILL ALLOW. THIS PROVISION SHALL SURVIVE THE REPAYMENT OF THE REPAYMENT AMOUNT AND THE TERMINATION OF THIS AGREEMENT.**

**Covered claims**

- a. *Borrower and/or Guarantors, (collectively hereinafter referred to as "Borrower") or LENDER may arbitrate any claim, dispute or controversy between Borrower and LENDER arising out of or related to this Agreement, any other agreement, or the Borrower/LENDER relationship ("Claims").*
- b. **If arbitration is chosen by any party in accordance with Section 4.12(h) neither Borrower nor LENDER will have the right to litigate that Claim in court or have a jury trial on that Claim.**
- c. Except as stated below, all Claims are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek, including Claims based on contract, tort (including intentional tort), fraud, agency, Borrower or LENDER's negligence, statutory or regulatory provisions, or any other sources of law; Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise; Claims made regarding past, present, or future conduct; and Claims made independently or with other claims. This also includes Claims made by or against anyone connected with LENDER or Borrower or claiming

through LENDER or Borrower, or by someone making a claim through LENDER or Borrower, such as a co-applicant, authorized user, employee, officer, director, shareholder, member, manager, partner, owner, affiliate, subsidiary, parent company, agent, representative, guarantor, assignee, transferee, purchaser, investor, financier, successor, attorney, and professional.

**Arbitration limits**

- d. Individual Claims filed in a small claims court are not subject to arbitration, as long as the matter stays in small claims court.
- e. LENDER will not initiate arbitration to collect any amounts due from Borrower in the Event of Default of a payment obligation. If Borrower asserts a Claim against LENDER, LENDER may elect to arbitrate any Claims against LENDER, Borrower or Guarantor.
- f. Claims brought as part of a class action, private attorney general or other representative action can be arbitrated only on an individual basis. The arbitrator has no authority to arbitrate any claim on a class or representative basis and may award relief only on an individual basis. If arbitration is chosen by any party, neither Borrower nor LENDER may pursue a Claim as part of a class action or other representative action. Claims of 2 or more persons may not be combined in the same arbitration. However, applicants, co-applicants, authorized users on a single account and/or related accounts, or corporate affiliates are here considered as one person.

**How arbitration works**

- g. Arbitration shall be conducted by the American Arbitration Association ("AAA") according to this arbitration provision and the applicable AAA Commercial Arbitration Rules in effect when the claim is filed ("AAA Rules"), except where those rules conflict with this arbitration provision. Borrower can obtain copies of the AAA Rules at the AAA's website ([www.adr.org](http://www.adr.org)) or by calling 800-778-7879. Borrower or LENDER may choose to have a hearing, appear at any hearing by phone or other electronic means, and/or be represented by counsel. Notwithstanding any terms to the contrary, any in-person hearing will be held in either San Francisco or Los Angeles, California, as agreed by the Borrower and LENDER. If Borrower and LENDER cannot agree, any in person hearing shall be held in Los Angeles, California.
- h. Arbitration may be requested any time, even where there is a pending lawsuit, unless a trial has begun or a final judgment entered. Neither Borrower nor LENDER waive the right to arbitrate by filing or serving a complaint, answer, counterclaim, or motion in a lawsuit. To choose arbitration, a party

must file a motion to compel arbitration in a pending matter and/or commence arbitration by submitting the required AAA forms and requisite filing fees to the AAA.

- i. The arbitration shall be conducted by a single arbitrator in accordance with this arbitration provision and the AAA Rules, which may limit discovery. The arbitrator shall not apply any federal or state rules of civil procedure for discovery, but the arbitrator shall honor claims of privilege recognized at law and shall take reasonable steps to protect account information and other confidential information of either party if requested to do so. The arbitrator shall apply the substantive laws of the State of California without regard to any applicable principals of conflicts of law.
- j. The arbitrator shall make any award in writing and, if requested by Borrower or LENDER, shall include a reasoned opinion for the award. An arbitration award shall decide the rights and obligations only of the parties named in the arbitration, and shall not have any bearing on any other person or dispute.
- k. The arbitrator shall have no authority to award punitive damages, consequential damages, or other damages not measured by the prevailing party's actual damages, except as required by statute.

**Paying for arbitration fees**

- l. Arbitration fees will be allocated according to the applicable AAA Rules. All parties are responsible for their own attorney's fees, expert fees and any other expenses, unless the arbitrator awards such fees or expenses to LENDER based on applicable law and as authorized under this Agreement.
- m. The parties hereto agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- n. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of both parties.

**The final award**

- o. Any award by an arbitrator is final unless a party appeals it in writing to the AAA within 30 days of notice of the award pursuant to the AAA's Optional Appellate Arbitration Rules. The arbitration appeal shall be determined by a panel

of 3 arbitrators. The panel will consider all facts and legal issues anew based on the same evidence presented in the prior arbitration, and will make decisions based on a majority vote. Arbitration fees for the arbitration appeal shall be allocated according to the applicable AAA Rules. An award by a panel on appeal is final. A final award is subject to judicial review as provided by applicable law.

**Survival and Severability of Terms**

- p. Notwithstanding any terms to the contrary herein, this arbitration provision shall survive changes in this Agreement and termination of the account or the relationship between Borrower and LENDER, including the bankruptcy of any party and any sale of Borrower account(s), or amounts owed on Borrower account(s), to another person or entity. Notwithstanding any terms to the contrary herein, if any part of this arbitration provision is deemed invalid or unenforceable, the other terms shall remain in force, except that there can be no arbitration of a class or representative Claim. Notwithstanding any terms to the contrary herein, this arbitration provision may not be amended, severed or waived, except as provided in this Agreement or in a written agreement between Borrower and LENDER.

**RIGHT TO OPT OUT OF ARBITRATION.**

- q. BORROWER AND GUARANTOR(S) MAY OPT OUT OF THE ARBITRATION PROVISION ABOVE. TO OPT OUT OF THE ARBITRATION CLAUSE, BORROWER AND EACH GUARANTOR MUST SEND LENDER A NOTICE THAT THE BORROWER AND EACH GUARANTOR DOES NOT WANT THE ARBITRATION CLAUSE TO APPLY TO THIS AGREEMENT. FOR ANY OPT OUT TO BE EFFECTIVE, BORROWER AND EACH GUARANTOR MUST SEND AN OPT OUT NOTICE TO THE FOLLOWING ADDRESS BY REGISTERED MAIL, **WITHIN 14 DAYS AFTER THE DATE OF THIS AGREEMENT:**  
Kapitus Servicing, Inc. – ARBITRATION OPT OUT, 2500 Wilson Boulevard, Suite 350, Arlington, VA 22201, ATTENTION: General Counsel.

**SIGNATURES ON NEXT PAGE**

Borrower and Guarantor acknowledge that by signing below, Borrower and Guarantor agree to be bound by the terms, definitions, conditions and information in this Loan Agreement, including without limitation, the Loan Agreement Terms and Conditions.

**IT IS UNDERSTOOD THAT ANY REPRESENTATIONS OR ALLEGED PROMISES BY INDEPENDENT BROKERS OR AGENTS OF ANY PARTY IF NOT INCLUDED IN THIS WRITTEN AGREEMENT ARE CONSIDERED NULL AND VOID. ANY MODIFICATION OR OTHER ALTERATION TO THE AGREEMENT MUST BE IN WRITING AND EXECUTED BY THE PARTIES TO THIS AGREEMENT.**

**BORROWER**

By: {OWNER\_NT\_1}  
 (Print Name and Title)

(Signature)

**GUARANTOR**

By: {OWNER\_1}  
 (Print Name)

(Signature)

**USE OF PROCEEDS CERTIFICATION**

*This Use of Proceeds Certification is part of (and incorporated by reference into) the Loan Agreement. All parties should retain a copy of this document for their records.*

{FIELD017} Borrower(s) and {FIELD019} Guarantor(s) hereby certify the following to the LENDER:

- 1) The entirety of the Loan will be used in the ordinary course of business.
- 2) The entirety of the Loan will be used exclusively for a Business Purpose and no other. A Business Purpose as applied to use of proceeds obtained under this Loan Agreement, refers solely to the purchase and acquisition of specific products or services used for the following purposes only: working capital, business insurance (but not self-insurance programs), franchise fees, employee training, the purchase of equipment, inventory, business supplies and raw materials, the construction, renovation or improvement of facilities (but not the purchase of real estate). **Business Purpose does not include: (i) payment for, or purchase of, any items, goods, materials or services for personal, individual or household use; (ii) use of funds for any proceeding under the United States Bankruptcy Code or any similar law (whether arising under Federal or State law), and/or any other legal proceeding or alternative dispute resolution proceeding.**

**BORROWER**

By: {OWNER\_NT\_1}  
 (Print Name and Title)

(Signature)

**GUARANTOR**

By: {OWNER\_1}  
 (Print Name)

(Signature)

**SECURITY AGREEMENT AND GUARANTY**

*This Security Agreement and Guaranty is part of (and incorporated by reference into) the Loan Agreement. All parties should retain a copy of this document for their records.*

**SECURITY AGREEMENT**

**SECURITY INTEREST.** To secure Borrower's payment and performance obligations to LENDER and its affiliates or co-investors under the Loan Agreement (the "Loan Agreement"), Borrower hereby grants to LENDER a security interest in: (i) all accounts, accounts receivable, contracts, real property leases, notes, bills, acceptances, chooses in action, chattel paper, instruments, documents and other forms of obligations at any time owing to the Borrower arising out of goods sold or leased or for services rendered by Borrower, the proceeds thereof and all of Borrower's rights with respect to any goods represented thereby, whether or not delivered, goods returned by customers and all rights as an unpaid vendor or lienor, including rights of stoppage in transit and of recovering possession by proceedings including replevin and reclamation, together with all customer lists, books and records, ledger and account cards, computer tapes, software, disks, printouts and records, whether now in existence or hereafter created, relating thereto (collectively referred to hereinafter as "Receivables"); (ii) all inventory, including without limitation, all goods manufactured or acquired for sale or lease, and any piece goods, raw materials, work in process and finished merchandise, findings or component materials, and all supplies, goods, incidentals, office supplies, packaging materials and any and all items used or consumed in the operation of the business of Borrower or which may contribute to the finished product or to the sale, promotion and shipment thereof, in which Borrower now or at any time hereafter may have an interest, whether or not the same is in transit or in the constructive, actual or exclusive occupancy or possession of Borrower or is held by Borrower or by others for Borrower's account (collectively referred to hereinafter as "Inventory"); (iii) goods, including without limitation, all machinery, equipment, parts, supplies, apparatus, appliances, tools, fittings, furniture, furnishings, fixtures and articles of tangible personal property of every description now or hereafter owned by the Borrower or in which Borrower may have or may hereafter acquire any interest, at any location (collectively referred to hereinafter as "Equipment"); (iv) general intangibles in which the Borrower now has or hereafter acquires any rights, including but not limited to, causes of action, corporate or business records, inventions, designs, patents, patent applications, trademarks, trademark registrations and applications therefor, goodwill, trade names, trade secrets, trade processes, copyrights, copyright registrations and applications therefor, licenses, permits, franchises, customer lists, computer programs, all claims under guaranties, tax refund claims, rights and claims against carriers and shippers, leases, claims under insurance policies, all rights to indemnification and all other intangible personal property and intellectual property of every kind and nature (collectively referred to hereinafter as "Intangibles"); (v) all the capital stock, bonds, notes, partnership interests, member interests in limited liability companies, and other securities, if any, held of record or beneficially by the Borrower, including without limitation the capital stock of all subsidiaries of the Borrower, and the Borrower's interests in all securities brokerage accounts (collectively referred to hereinafter as "Investments"); (vi) all cash on hand and on deposit in banks, trust companies and similar institutions, and all property accounted for in the Borrower's financial statements as "cash equivalents" (collectively referred to hereinafter as "Cash"); (vii) all other assets, proceeds and items not directly referred to herein as those terms are defined in Article 9 of the Uniform Commercial Code under applicable federal and state law (collectively referred to hereinafter as "UCC Article 9 Items"); (viii) all accessions to, substitutions for, and all replacements, products and proceeds of the Receivables, Inventory, Equipment, Intangibles, Investments, Cash and UCC Article 9 Items (collectively referred to hereinafter as "Collateral"), including without limitation proceeds of insurance policies insuring the Collateral; and (ix) Books and records relating to any of the Collateral (including without limitation, customer data, credit files, computer programs, printouts, and other computer materials and records of the Borrower pertaining to any of the Collateral), whether now or hereafter owned or acquired by Borrower and wherever located; and all proceeds of the foregoing. If the Loan Agreement or any addenda identify more than one Borrower, this Security Agreement applies to each Borrower, jointly and severally.

**ADDITIONAL COLLATERAL AND CROSS-COLLATERAL.** To secure Guarantor's payment and performance of its obligations to LENDER (and its co-investors) under this Security Agreement and Guaranty (the "Security Agreement and Guaranty"), Guarantor hereby grants LENDER, for itself and its participants, a security interest in the collateral set forth in the Addendum to the Security Agreement and Guarantee (the "Additional Collateral"). Guarantor understands that LENDER will have a security interest in the aforesaid Additional Collateral upon execution of this Security Agreement and Guaranty.

Borrower and Guarantor each acknowledge and agree that any security interest granted to LENDER under any other agreement between LENDER and Borrower or Guarantor (the "Cross-Collateral") will secure the obligations hereunder and under the Loan Agreement.

Borrower and Guarantor each agree to execute any documents or take any action in connection with the Loan Agreement, Security Agreement and Guaranty as LENDER deems necessary to carry out the purpose of such agreements including, without limitation, to perfect or maintain LENDER's security interest in the Collateral, the Additional Collateral and the Cross-Collateral, including the execution of any account control agreements. Borrower and Guarantor each hereby authorize LENDER to file any financing statements deemed necessary by LENDER to perfect or maintain LENDER's security interest, which financing statement may contain notification that Borrower and Guarantor have granted a negative pledge to LENDER with respect to the Collateral, the Additional Collateral and the Cross-Collateral, and that any subsequent lender or lienor may be tortiously interfering with LENDER's rights. Borrower and Guarantor shall be liable for and LENDER may charge and collect all costs and expenses, including but not limited to attorney's fees and costs, which may be incurred by LENDER in protecting, preserving and enforcing LENDER's security interest and rights.

**NEGATIVE PLEDGE.** Borrower and Guarantor each agrees not to create, incur, assume, or permit to exist, directly or indirectly, any additional cash advances, loans, lien on or with respect to any of the Collateral, the Additional Collateral or the Cross-Collateral, as applicable without written permission of LENDER..

**CONSENT TO ENTER PREMISES AND ASSIGN LEASE.** LENDER shall have the right to cure Borrower's default in the payment of rent on the following terms. In the event Borrower or Guarantor are served with papers in an action against Borrower for nonpayment of rent or for summary eviction, Borrower or Guarantor promptly provide LENDER with such papers and LENDER may execute its rights and remedies under the Assignment of Lease (*see*, Loan Agreement Terms and Conditions, Section 2.12). Borrower also agrees that LENDER may enter into an agreement with Borrower's landlord giving LENDER the right: (a) to enter

Borrower's premises and to take possession of the fixtures, equipment and other Collateral therein for the purpose of protecting and preserving same; and (b) to assign Borrower's lease to another qualified merchant capable of operating a business comparable to Borrower's at such premises.

**ACKNOWLEDGEMENT.** The parties to the Loan Agreement, Security Agreement and Guaranty acknowledge that he, she or it have consulted with and obtained the advice of counsel prior to executing the Loan Agreement, Security Agreement and Guaranty or have determined to not avail themselves of such opportunity; that such agreements have been explained to such parties by his, her or its counsel if such party availed themselves of such opportunity; and the terms of such agreements are fully understood and voluntarily accepted by such parties. Should any provision of the Loan Agreement, Security Agreement and Guaranty require judicial interpretation, the court interpreting or construing the provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

**HEADINGS.** The headings in the Loan Agreement, Security Agreement and Guaranty are for administrative purposes only and are not to be considered in construing the terms of such agreements.

**REMEDIES.** Upon any Event of Default, LENDER may pursue any remedy available at law (including those available under the provisions of the UCC), or in equity to collect, enforce, or satisfy any obligations then owing, whether by acceleration or otherwise.

## **GUARANTY**

**PERSONAL GUARANTY.** Guarantor hereby guarantees to LENDER Borrower's payment and performance of all of the representations, warranties, covenants made by Borrower in this Agreement and the Loan Agreement, as each agreement may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations"). Guarantor's obligations are due (i) at the time of any breach by Borrower of any representation, warranty, or covenant made by Borrower in the Loan Agreement and all attachments thereto, including this Security Agreement and Guaranty and the Addendum to Security Agreement and Guaranty (as applicable), (ii) at the time Borrower or Guarantor admits its inability to pay its debts, or makes a general assignment for the benefit of creditors, or (iii) any proceeding shall be instituted by or against Borrower or Guarantor seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, or composition of it or its debts (as applicable); and/or (iv) or any receivership proceeding shall be instituted by or against Borrower or Guarantor..

**GUARANTOR WAIVERS.** In the event that Borrower fails to make a payment or perform any obligation under the Loan Agreement, LENDER may enforce its rights under this Agreement without first seeking to obtain payment from Borrower, any other guarantor, or any Collateral, Additional Collateral or Cross-Collateral LENDER may hold pursuant to this Security Agreement and Guaranty or any other guaranty.

LENDER does not have to notify Guarantor of any of the following events and Guarantor will not be released from its obligations under this Security Agreement and Guaranty if it is not notified of: (i) Borrower's failure to pay timely any amount owed under the Loan Agreement; (ii) any adverse change in Borrower's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; (iv) LENDER's acceptance of this Security Agreement and Guaranty; and (v) any renewal, extension or other modification of the Loan Agreement or Borrower's other obligations to LENDER. In addition, LENDER may take any of the following actions without releasing Guarantor from any of its obligations under this Security Agreement and Guaranty: (i) renew, extend or otherwise modify the Loan Agreement or Borrower's other obligations to LENDER; (ii) release Borrower from its obligations to LENDER; (iii) sell, release, impair, waive or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Agreement. Until the Repayment Amount and Borrower's other obligations to LENDER under the Loan Agreement are paid in full, Guarantor shall not seek reimbursement from Borrower or any other guarantor for any amounts paid by it under the Loan Agreement. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Borrower, any other guarantor, or any collateral provided by Borrower or any other guarantor, for any amounts paid by it, or acts performed by it, under this Agreement: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution. In the event that LENDER must return any amount paid by Borrower, any guarantor, entity or person with respect to the Guaranteed Obligations including without limitation any Borrower, any guarantor, entity or person becoming subject to a proceeding under the United States Bankruptcy Code or any similar law (whether arising under Federal or State law), and/or any other legal proceeding or alternative dispute resolution proceeding, Guarantor's Obligations under this Security Agreement and Guaranty shall remain in full force and effect and Guarantor shall be obligated for any such amounts repaid as well attorneys' fees, costs and interest in connection with such proceeding.

**GUARANTOR ACKNOWLEDGEMENT.** Guarantor acknowledges that: (i) He/She understands the seriousness of the provisions of this Security Agreement and Guaranty; (ii) He/She has had a full opportunity to consult with counsel of his/her choice; and (iii) He/She has consulted with counsel of its choice or has decided not to avail himself/herself of that opportunity.

**JOINT AND SEVERAL LIABILITY.** The obligations hereunder of the persons or entities constituting Guarantor under this Security Agreement and Guaranty are joint and several.

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "LOAN SUMMARY", "LOAN AGREEMENT", "LOAN AGREEMENT TERMS AND CONDITIONS", "USE OF PROCEEDS CERTIFICATION" AND ADDENDUM TO SECURITY AGREEMENT AND GUARANTY (AS APPLICABLE) ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS SECURITY AGREEMENT AND GUARANTY. CAPITALIZED TERMS NOT DEFINED IN THIS SECURITY AGREEMENT AND GUARANTY, SHALL HAVE THE MEANING SET FORTH IN THE "LOAN AGREEMENT" INCLUDING THE "LOAN AGREEMENT TERMS AND CONDITIONS".

By: {OWNER\_NT\_1}  
(Print Name and Title)

By:           {OWNER\_1}            
(Print Name)

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**ADDENDUM TO LOAN AGREEMENT AND SECURITY AGREEMENT AND GUARANTY**

**BORROWER INFORMATION**

Borrower's Legal Name: {FIELD001}

D/B/A: {FIELD002}

Type of entity: {BUSINESS\_TYPE\_FNAME}

Physical Address: {FIELD004}

Mailing Address: {FIELD008}

Date business started (mm/yyyy): {FIELD012}

City: {FIELD005}

City: {FIELD009}

Federal ID# {FIELD013}

State of Incorporation / Organization: {FIELD003}

State: {FIELD006}

Zip: {FIELD007}

State: {FIELD010}

Zip: {FIELD011}

**Additional Collateral: {FIELD023}**

**THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "SECURITY AGREEMENT AND GUARANTY" ARE HEREBY INCORPORATED IN FULL.**

**Joint and Several Liability.** The obligations hereunder of the persons or entities constituting each Borrower and each Guarantor under this Agreement are joint and several.

**OWNER/GUARANTOR #2**

By {OWNER\_2} \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

**OWNER/GUARANTOR #3**

By {OWNER\_3} \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

**OWNER/GUARANTOR #4**

By {OWNER\_4} \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

**OWNER/GUARANTOR #5**

By {OWNER\_5} \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

**OWNER/GUARANTOR #6**

By {OWNER\_6} \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

**OWNER/GUARANTOR #7**

By {OWNER\_7} \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

**OWNER/GUARANTOR #8**

By {OWNER\_8} \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

**OWNER/GUARANTOR #9**

By {OWNER\_9} \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

**OWNER/GUARANTOR #10**

By {OWNER\_10} \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)